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October 18, 1995

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VIA HAND DELIVERY

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: Petition for Rulemaking

Dear Mr. Caton:

Enclosed on behalf of Dr. James Whalen ("Petitioner") is an original and four copies of a Petition for Rulemaking.

If you have any questions with regard to this filing, please communicate with undersigned counsel.

Sincerely yours,

John C. Dodge

Enclosures: Orig. and Four

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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In the Matter of)
)
Amendment of Section 73.202,)
Table of Allotments,)
FM Broadcast Stations.)
(Machias, Maine))

MM Docket No. 95-
RM-

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

PETITION FOR RULEMAKING

On behalf of Dr. James Whalen ("Petitioner"), and pursuant to FCC Rules § 1.401, *et seq.*, we hereby request that the Commission institute a rulemaking proceeding to amend the Table of Allotments, FCC Rule § 73.202(b), to allot Channel 266B to Machias, Maine, as that community's second local FM service, and second full-time aural service. Petitioner hereby states his intention to file an application to apply for the channel if allotted.

Enclosed is a Technical Exhibit prepared by Graham Brock, Inc. showing that Channel 266B can be allotted to Machias consistent with the minimum distance separation requirements of FCC Rule § 73.207, provided the transmitter is located at least 12.75 kilometers west-northwest of Machias.

Machias, which has a population of 2,569, is the county seat of Washington County, Maine. As such, the town hosts county and federal government offices, a local branch of the University of Maine, several secondary and elementary schools, the DownEast Community

Hospital, and dozens of wholesale and retail establishments. Channel 266B, if allocated to Machias, would represent the second full-time, local aural station for the community.¹

CONCLUSION

Accordingly, for the foregoing reasons, we hereby request the Commission to issue a Notice of Proposed Rulemaking proposing allotment of Channel 266B to Machias, Maine.

Respectfully submitted,

DR. F. JAMES WHALEN

By: _____

John C. Dodge

Cole, Raywid & Braverman
1919 Pennsylvania Ave., N.W.
Suite 200
Washington, D.C. 20006

(202) 659-9750

His Attorneys

October 18, 1995

¹ Although still listed in the Commission's data base (and therefore properly characterized in the accompanying Technical Exhibit), operating authority for Machias' only AM service evidently was terminated in early 1993. See Letter from Stuart B Bedell, Asst. Chief, Audio Services Division, to Radio Four Broadcasting, Inc. (May 24, 1993). The AM service is not currently operating, hence the reference in the instant pleading that Channel 266B actually would be the *second* full time aural service for Machias.

GRAHAM BROCK, INC.

BROADCAST TECHNICAL CONSULTANTS

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PETITION FOR RULEMAKING

DR. JAMES WHALEN

ALLOT CHANNEL 266B

MACHIAS, MAINE

October 1995

TECHNICAL EXHIBIT

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PETITION FOR RULEMAKING
DR. JAMES WHALEN
ALLOT CHANNEL 266B
MACHIAS, MAINE
October 1995

TECHNICAL STATEMENT

1. This Technical Statement and attached exhibits were prepared on behalf of Dr. James Whalen ("Whalen"), petitioner seeking to allot Channel 266B to Machias, Maine, as that community's second local FM service. In support of this request, the following technical study indicates that Channel 266B can be allotted to Machias, Maine.

2. Channel 266B can be allotted to Machias, Maine, at geographic coordinates: North Latitude 44° 44' 15" and West Longitude 67° 37' 16". This represents a site restriction of 12.75 kilometers west-northwest of the community in order to avoid shortspacing the vacant allotment of Channel 265A at Weymouth, Nova Scotia, and the vacant allotment for Channel 266B at Liverpool, Nova Scotia. From this reference site a 3.16 mV/m contour can be delivered to Machias, Maine.

3. Machias, Maine, is located in Washington County, Maine, with a 1990 population of 2,569 persons. Machias presently has an AM and an FM station.¹ Machias is the county seat of Washington County, Maine, and has all of the requisite community identia for the allotment of an FM channel. The proposed allocation of Channel 266B would represent the second FM service in the community and its third full-time aural service to the community.

1) WMCS, 1400 kHz, and WALZ, Channel 237A.

4. Exhibit #1 is a usable area study denoting where a transmitter site for Channel 266B can be located and be clear of all other co- and adjacent channel stations and comply with §73.207 of the Commission's rules. A transmitter site located in the usable area will also comply with the pertinent treaties between the United States and Canada. Exhibit #2 is a §73.207 spacing study which indicates that from the reference site Channel 266B at Machias, Maine, is in compliance with spacing regulations and the U.S./Canadian agreement.

5. Therefore, Whalen herein requests the Commission amend §73.202(b) of its rules as follows:

Machias, Maine

Present

Proposed

237A

237A, 266B

PUBLIC INTERESTS ASPECTS

6. The proposed allocation of Channel 266B to Machias, Maine, will provide the community of 2,569 persons with its second FM service and third full-time aural service. A maximum Class B facility constructed at the reference site indicated above will provide 1.0 mV/m service to 9,782 persons. When allotted to Machias, Maine, Whalen will file an application, FCC Form 301, seeking authority to construct the proposed new facility on Channel 266B.

7. The foregoing Technical Statement and attached exhibits were prepared on behalf of Dr. James Whalen by Graham Brock, Inc., his Technical Consultants. All information contained herein is true and accurate to the best of our belief and knowledge. All data relating to FM allocations and facilities was extracted from the NTIA database updated September 29, 1995. We assume no liability for errors or omissions in that database which may be adverse to the requests contained herein.

**ALLOCATION STUDY FOR CHANNEL 266B MACHIAS, MAINE
USING PROPOSED ALLOCATION SITE AS REFERENCE**

REFERENCE		CLASS B				DISPLAY DATES		
44 44 15 N		Current rules spacings				DATA	09-29-95	
67 37 16 W		CHANNEL 266 -101.1 MHz				SEARCH	10-05-95	
CALL TYPE	CH# LAT	CITY LNG	STATE PWR	BEAR' HT	D-KM D-Mi	R-KM R-Mi	MARGIN (KM)	
AD266	266B	Machias	ME	0.0	0.00	241.0	-241.00	
AD	44 44 15	67 37 16	0.000 kW	OM	0.0	149.8		
Petition for Rule Making - Dr. James Whalen								
AL265	265A	Weymouth	NS	104.7	132.00	132.0	0.00	
AL	44 25 36	66 01 00	0.000 kW	OM	82.0	82.0		
AL266	266B	Liverpool	NS	107.7	244.26	237.0	7.26	
AL	44 02 00	64 43 00	0.000 kW	OM	151.8	147.3		
CBZFM	268C	Saint John	NB	52.4	136.66	125.0	11.66	
OP CN	45 28 39	66 14 02	100.000 kW	372M	84.9	77.7		
WKCG	267B	Augusta	ME	255.8	182.11	169.0	13.11	
LI CN	44 18 51	69 50 03	50.000 kW	98M	113.2	105.0		
Tryon-Seacoast Communications					BLH-820726AP			
AL263	263C	Saint John	NB	52.4	136.66	106.0	30.66	
AL	45 28 39	66 14 02	0.000 kW	OM	84.9	65.9		
AR263	263C	Saint John	NB	52.4	136.66	106.0	30.66	
RM	45 28 39	66 14 02	0.000 kW	OM	84.9	65.9		
WBYA	269A	Searsport	ME	257.8	108.43	69.0	39.43	
LI CN	44 31 27	68 57 16	1.350 kW	213M	67.4	42.9		
Searsport Broadcasting Partne					BLH-940906KC			

SECTION 73.207 SPACING STUDY

NOTE : SPACING TO THE CANADIAN STATIONS AND VACANT ALLOCATIONS IS MADE IN ACCORDANCE WITH THE WORKING ARRANGEMENT FOR ALLOTMENT AND ASSIGNMENT OF FM BROADCASTING CHANNELS 201-300 UNDER THE CANADIAN U.S.A. FM BROADCASTING AGREEMENT OF 1947 (AS AMENDED) .

EXHIBIT #2

**PETITION FOR RULE MAKING
DR. JAMES WHALEN
ALLOT CHANNEL 266B
MACHIAS, MAINE**

October 1995

GRAHAM BROCK, INC.

BROADCAST TECHNICAL CONSULTANTS

AFFIDAVIT AND QUALIFICATIONS OF CONSULTANT

State of Georgia)
St. Simons Island) ss:
County of Glynn)

JEFFERSON G. BROCK, being duly sworn, deposes and says that he is an officer of Graham Brock, Inc. Graham Brock has been engaged by Dr. James Whalen to prepare the attached Technical Exhibit.

His qualifications are a matter of record before the Federal Communications Commission. He has been active in Broadcast Engineering since 1979.


The attached report was either prepared by him or under his direction and all material and exhibits attached hereto are believed to be true and correct.

This the 5th day of October, 1995.



Jefferson G. Brock
Affiant

*Sworn to and subscribed before me
this the 5th day of October, 1995*



Notary Public, State of Georgia
My Commission Expires: September 12, 1999